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Nos. 179, 180, 181, 182

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 179

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, AND BADISCHE ANILIN SODA-FABRIK, PETITIONERS

v.

CHEMICAL FOUNDATION, INC., E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

MEMORANDUM FOR THE RESPONDENT, THE TREASURER OF THE UNITED STATES

(NOTE.—All of the captions will be found on pages 1 and 2 of the memorandum.)

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 179

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and Badische Anilin Soda-Fabrik, petitioners

v.

CHEMICAL FOUNDATION, INC., E. I. DU PONT DE NEMOURS & CO., and Walter O. Woods, as Treasurer of the United States

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No. 180

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, petitioner

v.

E. I. DU PONT DE NEMOURS & CO., AND WALTER O. Woods, as Treasurer of the United States

No. 181

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. Roessler, petitioner

v.

E. I. DU PONT DE NEMOURS & CO., AND WALTER O. Woods, as Treasurer of the United States

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No. 182

BADISCHE-ANILIN & SODA FABRIK, PETITIONER

v.

E. I. DU PONT DE NEMOURS & CO., AND WALTER O. Woods, as Treasurer of the United States

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MEMORANDUM FOR THE RESPONDENT, THE TREASURER OF THE UNITED STATES

This litigation arises by reason of four suits which were instituted in equity in the District Court of the United States for the District of Delaware in June, 1922, by the Chemical Foundation, Inc., a Delaware corporation, and the Farbwerke vormals Meister Lucius & Bruning, the Deutsche Gold & Silber Scheide Anstalt vorm. Roessler and the Badische Anilin & Soda Fabrik, German corporations, respectively, against E. I. du Pont de Nemours & Company, a Delaware corporation (to which suits the Treasurer of the United States was made a party defendant pursuant to statutory

requirement) (R. 15, 38, 41, 44), to recover a reasonable royalty as prescribed by subdivision (f) of Section 10 of the Trading with the Enemy Act (c. 106, 40 Stat. 421), for the use and enjoyment by said du Pont Company of United States letters patent Nos. 680,395, 718,340, and 868,294 under a license issued to the du Pont Company on January 21, 1918, by the Federal Trade Commission (R. 29). These four causes were consolidated by the District Court (R. 53) and were heard together by the Circuit Court of Appeals (R. 249).

The District Court decided in favor of the Chemical Foundation and against the petitioners, 29 F. (2d) 597 (R. 176), and the Circuit Court of Appeals affirmed the decision of the District Court in all respects, 39 F. (2d) 366 (R. 251).

The facts involved in these four cases are clearly stated, and the law applicable thereto discussed, in the opinions below, and it is unnecessary to restate the same in this memorandum.

The Treasurer of the United States does not now contend that he should prevail in all of these four suits. These causes have been thoroughly considered by two courts, both of which have reached the same conclusions. The causes of action arise under a war-time statute which has no general application in time of peace and upon a peculiar state of facts which will not likely arise in the future except as to certain related cases which fall within the same category as these four suits. The Treasurer and

the Alien Property Custodian, however, filed their petition for writs of certiorari to review the decrees of the Circuit Court of Appeals (Docket Nos. 271, 272, 273, 274), merely because the German plaintiffs, Farbwerke vormals Meister Lucius & Bruning, Deutsche Gold & Silber Scheide Anstlat vorm. Roessler, and Badische Anilin & Soda Fabrik, who failed in the courts below, filed a petition for writs of certiorari. Furthermore, these causes are not so clear and simple that the Treasurer and the Alien Property Custodian will be justified in assuming that there is no possibility that this Court will refuse to review the matter upon the petition of the German plaintiffs and that the ultimate decision of the causes may not be in favor of them and against the Treasurer and the Custodian. If this should occur, and if the decrees against the German plaintiffs should be reversed while the decree in favor of the Chemical Foundation should stand, such decrees would be inconsistent, and the Treasurer would be placed in an awkward position in that he would in that event be ordered to pay royalty to the German plaintiffs which both courts below determined had been assigned to the Chemical Foundation.

This whole litigation in effect is now narrowed to a controversy between the German plaintiffs and the Chemical Foundation. It is a matter of indifference to the respondent, the Treasurer of the United States, whether the instant petition is

granted or not. However, reference is made to the petition for writs of certiorari of this respondent in Nos. 271, 272, 273, 274, and respondent feels that if the instant petition is granted, then the Court should review all of the decrees below. Consequently, he neither joins in nor opposes the prayer of the instant petition.

THOMAS D. THACHER,
Solicitor General.

J. FRANK STALEY,
Attorney.

THOMAS E. RHODES,
Special Assistant to the Attorney General.

JULY, 1930.

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Nos. 179, 180, 181, 182, 271, 272, 273, 274

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 179

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. ROESSLER, AND BADISCHE ANILIN SODA-FABRIK, PETITIONERS

v.

CHEMICAL FOUNDATION, INC., E. I. DU PONT DE NEMOURS & CO., AND WALTER O. WOODS, AS TREASURER OF THE UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

(NOTE.—All of the captions will be found on pages 1, 2, and 3 of this memorandum)

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 179

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and Badische Anilin Soda-Fabrik, petitioners

v.

CHEMICAL FOUNDATION, INC., I. E. DU PONT DE NEMOURS & CO., and Walter O. Woods, as Treasurer of the United States

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No. 180

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, petitioner

v.

E. I. DU PONT DE NEMOURS & CO., AND WALTER O. Woods, as Treasurer of the United States

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No. 181

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. Roessler, petitioner

v.

E. I. DU PONT DE NEMOURS & CO., AND WALTER O. Woods, as Treasurer of the United States

No. 182

BADISCHE-ANILIN & SODA FABRIK, petitioner

v.

E. I. DU PONT DE NEMOURS & Co., AND WALTER O. Woods, as Treasurer of the United States.

No. 271

WALTER O. WOODS, AS TREASURER OF THE UNITED States, petitioner

v.

THE CHEMICAL FOUNDATION, INC., AND E. I. DU Pont de Nemours & Co., respondents

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No. 272

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, petitioner

v.

FARBWERKE VORMALS MEISTER LUCIUS & BRUNING, E. I. du Pont de Nemours & Co., and Walter O. Woods, as Treasurer of the United States, respondents.

No. 273

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, petitioner

v.

DEUTSCHE GOLD & SILBER SCHEIDE ANSTALT VORM. Roessler, E. I. du Pont de Nemours & Co., and Walter O. Woods, as Treasurer of the United States, respondents

No. 274

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, petitioner

v.

BADISCHE ANILIN & SODA-FABRIK, E. I. DU PONT DE NEMOURS & CO., and WALTER O. WOODS, as Treasurer of the United States, respondents

---

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

MEMORANDUM FOR THE TREASURER OF THE UNITED STATES AND THE ALIEN PROPERTY CUSTODIAN

This litigation arises by reason of four suits which were instituted in equity in the District Court of the United States for the District of Delaware in June, 1922, by the Chemical Foundation, Inc., a Delaware corporation, and the Farbwerke vormals Meister Lucius & Bruning, the Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and the Badische Anilin & Soda-Fabrik, German corporations, respectively, against E. I. du Pont de Nemours & Company, a Delaware corporation (to which suits the Treasurer of the United States was made a party defendant pursuant to statutory requirement) (R. 11, 34, 36, 39), to recover a reasonable royalty as prescribed by subdivision (f) of Section 10 of the Trading with the Enemy Act (c. 106, 40 Stat. 421), for the use and enjoyment by

said du Pont Company of United States Letters Patent Nos. 680,395, 718,340, and 868,294 under a license issued to the du Pont Company on January 21, 1918, by the Federal Trade Commission (R. 27). These four cases were consolidated by the District Court (R. 44), and were heard together by the Circuit Court of Appeals (R. 181). On April 28 1928, the Alien Property Custodian filed motions for substitution as plaintiff for and instead of the three German plaintiffs in the suits brought by them (R. 53, 60, and 67), basing his claim for substitution on the provisions of Section 19 of the Settlement of War Claims Act, approved March 10, 1928 (c. 167, 45 Stat. 254, 277).

The District Court decided in favor of the Chemical Foundation and against the German petitioners and the Alien Property Custodian and the Treasurer, 29 F. (2d) 597 (R. 137), and the Circuit Court of Appeals affirmed the decision of the District Court in all respects, 39 F. (2d) 366 (R. 183).

The petition for certiorari in Nos. 179, 180, 181, and 182 was filed on June 4, 1930. On June 4, 1930, the Chief Justice extended for 35 days from that date the time within which the Treasurer of the United States and the Alien Property Custodian might apply for writs of certiorari in Nos. 271, 272, 273, and 274. (R. 201.) The petition of the Treasurer of the United States and the Alien Property Custodian for writs of certiorari in Nos. 271, 272, 273, and 274 was filed on July 8, 1930.

Certiorari in each of said cases was granted on October 13, 1930, 282 U. S. iv–v. (R. 201–204.)

The facts involved in these four cases are clearly stated and the law applicable thereto is discussed in the opinions below (R. 137, 183), and it is unnecessary to restate the same in this memorandum.

The Treasurer of the United States and the Alien Property Custodian do not now contend, as they contended in the courts below, that they should prevail in these suits. The Treasurer and the Custodian, however, felt compelled to file a petition for writs of certiorari to review the decrees below because the German petitioners, Farbwerke vormals Meister Lucius & Bruning, the Deutsche Gold & Silber Scheide Anstalt vorm. Roessler, and the Badische Anilin & Soda-Fabrik, who failed in the courts below, had filed a petition for writs of certiorari. If the Treasurer and the Custodian had not obtained writs of certiorari to review the decrees below, and if those decrees should be reversed upon the petitions presented by the German petitioners, the Treasurer and the Custodian might be required to satisfy conflicting decrees.

This whole litigation in effect is now narrowed to a controversy between the German petitioners and the Chemical Foundation and the du Pont Company. The Treasurer of the United States and the Alien Property Custodian neither join nor oppose the German petitioners in seeking the relief asked

for by them, but stand ready to comply with such decrees as may be entered upon the mandate of this Court.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

J. FRANK STALEY,
Acting Head, Admiralty Division.

THOMAS E. RHODES,
Special Assistant to the Attorney General.

MARCH, 1931.

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